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ABSTRACT

An instructor's guide for teaching adults to manage their estates is presented. Topics covered are: (1) accumulating an estate, (2) estimating the estate, (3) wills, (4) trusts, and (5) problems of business owners, employees, and professionals. An appendix is included. (CK)

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Γ COURSE

EVERYMAN'S ESTATE PLANNING

THE UNIVERSITY OF THE STATE OF NEW YORK

THE STATE EDUCATION DEPARTMENT

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Everyman's Estate Planning

A Suggested Adult Business Education Course

The University of the State of New York
THE STATE EDUCATION DEPARTMENT
Bureau of Continuing Education Curriculum Development
Albany, New York 12224
1971

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Foreword

This instructor's guide, *Everyman's Estate Planning*, is intended to help the instructor give an adult course of the kind indicated by the title. The term *estate planning* includes the accumulating, conserving, and distributing of the material things that make up an estate.

The laws and the taxes which apply to estates are even more complex today than in 1964, when the original edition of this guide was published. Therefore, an even greater need for training exists today. The present edition supersedes the 1964 edition, and the *Case-Problem Analysis* in the Appendix supersedes the "kit" which accompanied the 1964 edition.

The present edition was planned and written by James Conway, president of AYCO Planning Services Inc., Schenectady; and John René Vincens, vice president, Irving Trust Company, New York City. Benjamin F. Hammet, assistant professor of English, Rensselaer Polytechnic Institute, assisted in the writing; E. Noah Gould, Associate in the Bureau of Continuing Education Curriculum, supervised the writing and edited the manuscript. Eugene P. Whitney, Associate in the Bureau of Business Education, reviewed the manuscript before publication.

Both of the bureaus mentioned welcome suggestions for improving this instructor's guide. Suggestions growing out its use in teaching are particularly helpful.

HERBERT BOTHAMLEY, *Chief*
Bureau of Continuing Education
Curriculum Development

WILLIAM E. YOUNG, *Director*
Curriculum Development Center

Message to the Instructer

This guide is published as a convenience to the instructors and to indicate the content recommended for the course.

Students will be primarily laymen with their own estates to plan. The course is not intended to make anyone an expert but to provide a reasonably broad background in the subject. Any layman completing the course is still urged to consult a well-qualified lawyer and others well-qualified in the various phases of estate planning to help him plan his own estate.

As indicated on the title page, the course in this booklet is suggestive and not mandatory. Instructors are encouraged to make whatever changes they need for the class they are teaching.

No particular scheduling of class time is required by the State Education Department. A pattern that has been followed in some cases is to have a 2-hour class once a week for a total of 6 weeks. The Case-Problem Analysis in the Appendix should be duplicated and the copies distributed to the students. It can then be discussed at appropriate points in the course and can also be used as a basis for problem assignments.

Since this course covers many aspects of estate planning, it is desirable that several different instructors participate. These could include an attorney, a trust officer, an accountant, a life underwriter, and an investment counselor. Those who have been instructors have generally had considerable experience in the aspects they teach. If necessary, help in finding instructors can be obtained through professional societies in the specialties mentioned.

An adult education director who needs any additional help in planning or operating a course can obtain it from the Bureau of Business Education in Albany.

HOBART H. CONOVER, *Chief*
Bureau of Business Education

ROBERT H. BIELEFELD, *Director*
Division of Occupational Education Instruction

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Lesson 1

Introduction

WHAT IS ESTATE PLANNING?

Estate planning is a process whereby a person attempts to:

- Build and accumulate capital such as real estate, savings accounts, life insurance, stocks, and bonds
- Conserve these capital accounts
- Secure the maximum benefits from the possession and use of the types of property in the capital accounts
- Distribute the property to members of his family, friends, charities, or other beneficiaries, with a minimum of shrinkage from unnecessary waste, expense, and taxation

WHO CAN ASSIST IN ESTATE PLANNING?

Adequate advice in estate planning may be obtained from one or more advisors. The "team" of necessity includes a lawyer, and may include a trust officer, a life underwriter, an investment advisor, and an accountant. All provide important services which may be required in various stages of the estate planning process. Not every person will need all of the advisors mentioned.

The size and complexity of a man's estate will determine the need for, and the role of each of the professionals. Which person is contacted first and which one is "captain" of the team is immaterial. The role of each member could be cast about as follows:

- The lawyer--necessary for the preparation of legal documents, determination of legal and tax consequences of proposed actions, probate proceedings, etc.
- The trust officer--highly desirable if trusts are to be considered or if a bank or a trust company is contemplated as executor, trustee, or investment manager
- The life underwriter--necessary for the analysis of the use of products of a life insurance company
- The investment advisor--provides stock purchase and investment management services
- The accountant--necessary if the estate is large, has complicated property holdings requiring tax assistance, or includes a closely held business which presents special problems such as valuation

WHAT ARE THE STEPS IN THE ESTATE PLANNING PROCESS?

While the procedures in the planning process may vary from one situation to another, certain basic steps should be followed if the property owner is to make intelligent decisions about his property.

These steps are set forth in what might be called a natural planning sequence:

1. Inventory or data-taking

   Family information

   - Names
   - Addresses
   - Relationships
   - Ages
   - Marital Status
   - Social security numbers
   - Prior addresses
   - Employers
   - Geneology

   Listing of assests and liabilities (Items opposite each other in the two columns below are not necessarily related.)

Assets	Liabilities
• Cash accounts (checking, saving, savings and loan)	• Loans (including bank notes, installment loans, and time purchases)
• Investments (U.S. savings bonds, stocks, other bonds)	
• Business interests (corporate stock, partnership share, proprietorship interest)	
• Real estate (residence, summer property, investment property)	• Mortgages
• Tax-sheltered investments (oil and gas funds, cattle units)	• Contracts with continuing obligations
• Life insurance (personal and group etc.)	• Contingent liabilities
• Employee benefit plans (pension, profit sharing, thrift)	
• Personal property (autos, furniture, jewelry, antiques, collections)	• Other substantial indebtedness
• Obligations (held as creditor)	

Marshalling of all necessary documents

- Wills
- Trust instruments
- Income tax returns
- Gift tax returns
- Investment listings
- Business purchase agreements
- Birth and death certificates
- Financial statements
- Business data
- Life insurance policies
- Deeds

Determination of ownership

- Sole name
- Joint tenancy

  With right of survivorship
  Tenants in common
  Tenants by the entirety
  Community property (in some states)

- Custodianship under Uniform Gift to Minors Act (EPTL, Sec. 7-4.10.)
- Other forms, such as Totten Trust and business or corporate ownership

2. Estate planning objectives

- Estate accumulation
- Estate conservation
- Flexibility in planning
- Coordination of assets
- Intangibles (the human factors in the family that will take precedence over other factors like tax-savings)

3. Analyzing the estate

- Examination of assets by type and ownership
- Review of life insurance policies
- Pricing of securities at current market, determination of cost basis, yields; analysis of holdings in consideration of personal objectives and financial goals
- Valuation of business interests
- Appraisal of real property and personal property
- Review of employee benefit plans (value, benefits, beneficiary designations, etc.)
- Examination of liabilities, including contingent liabilities

4. Examination of problem areas

Testamentary planning

- Liquidity
- Life insurance
- Marital deduction
- Property ownership
- Disposition of specific assets
- Income and principal distribution

Living planning

Gifts

- Disparity between spouses' estates
- Marital deduction
- Minimizing taxes
- Joint ownership

Income planning

- Minimizing taxes
- Analysis of investment objectives, examination of present holdings, consideration of diversification, tax consequences of retention or sale of present holdings, need for management
- Retirement income

Business planning

- Valuation of business
- Business purchase agreement
- Ownership control
- Successor management
- Income for wife
- Sale or merger of corporation
- Corporate reorganization
- Pension and profit-sharing plan
- Individual deferred compensation
- Other employee benefits

5. Estimating the estate expenses

Certain estimates, even though necessarily approximations, need to be made as a basis for suggestions for testamentary or living planning. These consist of estimates of:

- Administrative expenses and probate costs
- Federal and New York estate taxes (including use or nonuse of marital deduction) (See Lesson 3.)
- Present and future gift tax status
- Present and future income tax status

6. Preadministration of the estate as presently planned

This step affords a preview of a situation in which no more planning is done. The step is accomplished by:

- Allocation of specific assets to payment of administration expenses and taxes
- Determination of effect of joint ownership on property transmission
- Distribution of solely owned property either by contract (as in life insurance), by will, or by the laws of intestacy

The taking of this step affords an excellent background against which to determine what planning moves need to be made.

7. Planning suggestions

It should now be possible to write down specific suggestions for effective estate planning on each of the following topics:

• Accumulating an Estate	Lesson 2
• Conserving an Estate	Lesson 3
• Wills	Lesson 4
• Trusts	Lesson 5
• Problems Affecting Special Groups	Lesson 6

8 Action

Decisions to be made by property owner after due consideration of alternatives suggested by his advisors

Drafting of necessary documents and review by property owner and advisors

Execution of the necessary documents

Insurance and changes to be carried out

CASE-PROBLEM ANALYSIS

Use this case-problem for discussion in each class session.

MR. EVERYMAN

HIS FAMILY

John Everyman		Age 45
Jeanne Everyman	His wife	42
Joan	His daughter	15
Jeremy	His son	12
Jeffery	His son	10

HIS ESTATE

Bank accounts (checking and savings)				$ 5,000
Tangible personal property (autos, furniture, silver, china, and antiques)				5,000
Real estate (family residence, title in joint name of husband and wife as tenants by the entirety, purchased by husband)				20,000
Life Insurance:	Personal	$15,000		
	Group	25,000	Total	40,000
Business interest (net value of partnership interest)				20,000
Investments (stocks, U.S. savings bonds, and mutual funds)				15,000
			Total:	$105,000

Lesson 2

Accumulating an Estate

INTRODUCTION

The assets a man accumulates during his life comprise his "living estate." On his death, the assets he owns form his "testamentary estate." Life insurance in one or more forms, is an important part of a man's total estate. During his life, he needs the protection afforded by life insurance. At his death, life insurance matures and creates assets which can perform several functions in the estate plan.

Accumulation through systematic investment methods often creates accounts subject to depreciation, taxation, deflation, or inflation which cause them to fall short of anticipated goals. Many people find it very difficult to accumulate an estate sufficient to accomplish their objectives because they are:

- Reluctant to sacrifice
- Tempted by speculative schemes
- Unknowledgeable and inexperienced

Human life values are more important than property values. They consist of the factors of personal skill, character, industry and judgment, experience, and driving force. Usually regarded as intangible, these human life values can be made tangible and definite.

Few people appreciate the far-reaching economic importance of estate-accumulation vehicles which are important to the objective of replacing earning power in the event of premature death, disability, or old age.

A man's estate can be created and accumulated through many methods during his life time. Some of these methods are:

- Life insurance
- Savings banks and savings and loan associations
- Social security
- Stocks
- Bonds
- Pension and profit-sharing plans
- Real estate
- Stock options
- Inheritances
- Business and professional interests
- Other types of investments
- Other types of employee fringe benefits

ACCUMULATING AN ESTATE THROUGH LIFE INSURANCE

Life insurance can solve problems of estate-creation, conservation, distribution, and income protection. Sound planning requires care in the selection of proper types of life insurance.

A. LIFE INSURANCE AS AN ESTATE PLANNING TOOL

Life insurance used in estate-creation:

- Is a preferential form of property with unique guarantees of performance
- Is an expensive form of estate-creation
- Can be tailor-made to fit needs
- Is systematic, certain, and self-completing
- Offers flexibility of ownership and control
- Can have flexibility in payment of premiums

Life insurance used in estate-conservation:

- Is a safe method of accumulation
  - Diversified portfolio, professionally-managed
  - Spreads risks, based upon actuarial principles
- Has guaranteed returns
  - Cash values and other living benefits
  - Death benefits
- Has flexibility of settlement options and is an effective planning tool
- Is exempt from creditors' claims in most instances
- Cash values can be used during the owner's lifetime

Life insurance used in estate administration:

- Can provide liquidity
- Can provide funds for special needs, such as:
  - Debts
  - Specific bequests
  - Other legal obligations requiring cash

- The designation of a named beneficiary (other than the estate) can free the proceeds from:
  - New York State estate taxes (up to $100,000 in certain cases)
  - Administration expenses
  - Other transfer costs

- The face value usually exceeds the total premiums paid.

Life insurance used in estate income production:

- Through settlement options
  - Guaranteed return of a known amount for a predetermined period (But a fixed dollar return contains the hazard of reduced purchasing power in an inflationary period.)
  - Income tax advantages
    - $1,000 interest exclusion
    - Exclusions under annuity rules

May provide "spendthrift" protection

- Through other channels
  Securities
  Trusts

B. MAJOR TYPES AND PURPOSES OF INSURANCE CONTRACTS

Life Insurance

- Whole life
  Multiple-purpose contract which provides protection for the whole of life. It is sometimes called ordinary life, straight life, or similar names, and is a combination of protection and investment.

- Limited payment plans
  These are whole life plans in which the premium payments either are limited to a specific number of years or cease at a given age. The purpose is to complete payments during the most productive years.

- Endowments
  These are also permanent plans. This type of policy calls not only for the payment of the face value at death, but also for the payment of the face value of the policy at the end of a period of years, if the insured is then living. The purpose is to build greater equities for various terminal contingencies.

- Term plans
  These are essentially specific risk policies for a limited period of time. They may provide a level amount of coverage, or a decreasing amount. Some contracts are renewable at the end of the initial term, and may often be converted to other forms of life insurance.

- Group plans
  These are generally a form of term insurance purchased or made available through a group, such as an employer, a fraternal society, or a business association.

Annuities

- Straight annuities
  The standard form of annuity calls for the payment of an annual premium for a specific period of time and guarantees to pay a certain amount of money in a single lump-sum or in stipulated amounts over a stated period of time, commencing at a future date.

- Variable annuities
  A relatively new type of contract which provides for the payment of a variable amount of money over a stated period of time. A variable annuity is a merger of an investment fund and an annuity. The amount of each payment depends upon the investment results of the equity-based fund of the insurance company. The exact dollar amount of each payment may be more or less than anticipated.

Disability income protection

- By far the most important source of income is *earned income*, the money a man or woman earns by working. Most families depend on this source of funds for daily living expense. Disability income protection safeguards against the loss of earned income if a man (or woman) is unable to perform his normal work functions, due to accident or sickness.

  In consideration of the payment of annual premiums, the insurance company guarantees to pay a stipulated sum of money to an insured in event of disability, for a stated period of time.

- Types of disability income insurance available:
  Cancellable and noncancellable
  Coverage limited to certain periods of time, such as 2 years, 5 years, age 65, or lifetime
  Waiting periods vary: 1 day, 1 week, 30 days, 60 days, 90 days, or others
  Limitations on amount of insurance: generally 70 percent of earned income, subject to a dollar limitation, usually $1,000 or $1,200 a month
  Disability can be defined as the inability to engage in one's regular occupation for a limited period of time, and thereafter the inability to engage in any gainful occupation for which one is reasonably fitted by education, training, and experience
  Other optional benefits are: partial disability benefits, hospitalization coverage, office overhead coverage for businessmen, and accidental death and dismemberment benefits

C. SOME SPECIFIC USES OF LIFE INSURANCE IN ESTATE PLANNING

- Since life insurance is a matter of contract law, and not a matter of estate and probate law (except for estate and testamentary trust designations), life insurance proceeds can be distributed to named beneficiaries for specific purposes outside of the probate distribution.

- It is a funding vehicle for business needs, such as
  Deferred compensation
  Pension and profit-sharing plans
  Key-man replacement
  Business purchase agreement
  Satisfying individual needs
    Split-dollar programs
    Income continuation

Have the class discuss the type(s) and amount of insurance Mr. Everyman might or should have.

ACCUMULATING AN ESTATE THROUGH INVESTMENTS

The capitalistic system enables individuals to participate in the economic growth and prosperity of the country through ownership of securities. Investment in securities:

- Involves risk, but also has possible rewards
- Requires basic financial planning, including primary cash reserves and an adequate life insurance program
- Requires careful supervision and attention by professional investment advisors

A. GENERAL TYPES OF INVESTMENT

- Bonds and debentures

  Bonds are certificates of debt, usually funded or collateralized.

  Debentures are certificates of debt unsecured by any pledge of property, sold against the general credit of the issuer.

  General Characteristics

  Fixed contract to pay stipulated rate of interest and repay principal at specific date

  Quality directly related to the credit of the issuer

  Generally regarded as superior investment due to relatively minimum risk

  Types

  Federal Government and agencies

  State and municipal

  The important feature is the Federal and State tax exemption, subject to limitations imposed by the Tax Reform Act of 1969

  General obligation or revenue

  Corporate

  Convertible bonds

  Mortgage and debenture

  Others

  Advantages of bonds

  Is a contract to pay a fixed amount of income (interest) and to return the principal in the future

  Can be used as collateral

  Is generally readily marketable

  Has relative price stability in a normal market with stable money conditions

  Sometimes has tax-exemption features

  Disadvantages of bonds

  Bonds lack growth potential during price inflation.

  Some bonds have limited marketability.

  Price is subject to fluctuation during periods of wide market changes and major changes in money conditions.

- Stocks

  Types

  Preferred

Advantages
- Has preference as to dividend
- May have cumulative feature as to dividends
- Has senior claim over common stock in event of liquidation
- May be convertible into common stock of issuing company

Disadvantages
- Does not have any maturity date
- Does not always share in growth of company unless convertible
- May not have any voting rights

Common

Advantages
- Ability to share in growth of company
- Limited liability of person owning common stock
- Dividends provide income and possibility of increase: Income and growth securities should be carefully selected according to need, degree of risk, purpose, and timing
- Relatively good marketability
- Can be used as collateral
- Ability to accumulate on systematic basis

Disadvantages
- High degree of risk because prices are subject to market fluctuations
- Individual responsibility for supervision

- Investment trust (mutual fund)

Types
- Real estate
- Stock and bond
  - Open-end
  - Closed-end

Advantages
- Paid management to supervise holdings
- Good marketability
- Ability to accumulate on systematic basis
- Provides diversification

Disadvantages
- Expense charges (commissions, sales charges, management fees)
- Degree of risk
- Moderate growth

B. INVESTMENTS AS AN ESTATE PLANNING TOOL

Accumulating an estate through current savings and private investments has the following advantages:

- Supplements current income
- Provides equity dollars as an inflationary hedge
- Allows diversification
- Meets current needs
- Affords opportunities for profit and trading advantages

- Permits use of systematic investments
- Makes possible some tax-exempt income
- Offers growth through common stocks and convertible securities
- Provides liquidity

Many people have problems in accumulating an estate through current savings, and private investments, for some of the following reasons:

- Takes time and is uncertain
- Contains hazards of premature death, disability, or living too long
- Exposes family to risks inherent in investing
- Is possible only out of spendable income, after living costs and taxes
- Is limited by individual's temptation to purchase material possessions
- May not satisfy terminal needs

NOTE: A distinction should be made between the role of a stock broker (one who executes buy and sell orders for his customers, and who may gratuitously offer investment advice), and an investment advisor (one who manages a portfolio, advises on buys and sells, for a fee, and who may also be a broker and able to execute the orders).

Have the class discuss the types of investments Mr. Everyman might or should have.

Instructors should conform to the American Bar Association's Information Opinion A of 1959 on the unauthorized practice of law. See Appendix.

Lesson 3

Estimating the Estate

MAKING THE ESTIMATE

Reasons for estimating the estate

- Determine estate tax bracket; compare with gift taxes
- Determine cash requirements
  - Taxes: Federal estate taxes due in 15 months, and 80 percent of New York State estate taxes due in 6 months
  - Administrative expenses
    - Executor's commissions
    - Attorney's fees
    - Funeral expenses
    - Court costs, appraisals, filing fees, etc.
  - Last illness expense
  - Immediate family needs
  - Debts
  - Investment opportunities available to the estate (e.g. favorably priced stock options)
- Determine the liquidity of the estate
  - Primary sources
    - Bank accounts
    - Life insurance policies
  - Secondary sources
    - Stocks, bonds, etc.
    - Employee benefit plans
    - Real estate
    - Business interests (e.g. Section 303 stock redemption plan)
- Highlight special problems
  - Title and ownership of assets
  - Other special problems
    - Dependent relatives
    - Family members in need of special medical care or financial security
    - Personal problems of the family and business
- Solve timing problems
  - Income tax elections
  - Subchapter "S" elections
  - Other tax options available to the executor

How to estimate the estate

- Use of worksheet
  Discussion of assets, with examples
  Discussion of liabilities, with examples
  Discussion as to degree of accuracy required

Although values are relative and changing, reasonable approximations will suffice at this point. Exact figures should be used if available. Wild guesses may distort the results.

ESTATE TAXES

At the time of this revision, Congress has announced its intention to consider a major gift and estate tax reform bill. The proposed law would eliminate the present distinction between estate and gift taxes, and substitute a uniform transfer tax system. Students should be informed of the proposed legislation and of the fact that, as proposed, the new law would substantially change many of the present rules and practices in estate planning.

Federal and New York State estate taxes are paid by an estate for the privilege of transferring property at death. There is no Federal or New York State tax to be paid for inheriting property. Some other jurisdictions have inheritance taxes.

- Examples of estate taxes (Rates and schedules supplied in Appendix)

*Net Taxable Estate	Federal Tax	New York Estate Tax
$5,000	$150	$100
25,000	2,300	500
100,000	20,700	2,500
1,000,000	325,700	54,000

- Specific exemptions
  Federal: $60,000
  New York State:
    Wife
    Children
    Life insurance

- Marital deduction (see pages 16-18) is the smaller of the amount of property left outright or in a qualified trust to the surviving spouse, or 50 percent of the adjusted gross estate.

*The "net taxable estate" is generally not the same base figure for Federal and New York estate tax purposes: e.g. a $130,000 estate (less Federal marital deduction of one-half, and specific exemption of $60,000) equals a net taxable estate of $5,000; but the same $130,000 estate (less New York marital deduction of one-half, and four exemptions of $5,000 each for children) would equal a net taxable estate of $45,000 for New York estate tax purposes.

- Charitable Deductions
  The Tax Reform Act of 1969 made many changes which affect charitable deductions for income, gift, and estate tax purposes. These changes are very technical and complex, and the details are beyond the scope of this course. Students should be alerted to the fact that extreme care must be taken in this area if charitable contributions are intended to result in tax savings.

- Credits against tax (Previously taxed property, foreign property, etc.)

TAXABLE ESTATE

The gross estate for tax purposes is composed of all assets a man owns at the time of his death, plus any property over which he exercised *control* at the time of his death, and any gifts he made in contemplation of death, that is, within 3 years of his death.

A man's *probate estate* includes all property which is administered by his executor as part of the estate. It does not include such items as joint property, life insurance payable to a named beneficiary, and certain other forms of property.

Care should be taken to distinguish between these two *estate* definitions.

The *taxable estate* is the gross estate, less liabilities.

- Includable items
  Real estate
  Stocks
  Bonds
  Mortgages, notes, and cash
  Insurance proceeds
  Joint tenancy property
  Miscellaneous other properties: business interests, income accrued since death, household goods, personal effects, employee death benefits, etc.
  Properties transferred in contemplation of death

- Nonincludable items
  Benefits under qualified employee plans
  Life insurance owned by someone other than the insured (decedent)
  Limited interests, such as some life tenancies and some beneficial interests in trusts

Valuation problems of other includable items

- Unlisted interests
- Contracts
- Goodwill

Available options

- Valuation at date of death, date of distribution, or 6 months after death
- Deductibility of funeral and administrative expenses (from estate taxes or income taxes)

APPLICATION OF TAX RATES TO THE ESTATE

Death of one spouse

Subsequent death of remaining spouse

Reverse order of deaths

MARITAL DEDUCTION (For convenience of discussion, the assumption is made that the husband owns most of the property and will be the first of the spouses to die.)

WHAT IS IT?

- Where both spouses are living, the Revenue Code permits the husband to pass, free of estate tax, one-half of his adjusted gross estate to his wife. Thus, half of his estate (i.e. the marital deduction share) can pass to his wife free of estate taxes, but the other half will be subject to estate taxes when he dies. The marital deduction half, along with her own assets, will be subject to the wife's estate tax when she dies.
- By the use of marital deduction, a large estate can thus be converted into two smaller estates with a corresponding reduction in the applicable estate tax brackets.
- Revenue Ruling 64-19 requires that the assets distributed to the two halves of the husband's estates be equally representative of the appreciated as well as the depreciated values of property in the estate.

TO WHOM IS IT AVAILABLE?

- To either spouse where both are now living, but of no practical benefit where the taxable estate of such spouse is less than $60,000.

HOW TO QUALIFY PROPERTY FOR THE DEDUCTION

The wife must be given "control" through any one or more of the following means:

- By outright distribution in the will
- By joint ownership where she is the other joint tenant with right of survivorship
- By outright distribution to the wife under a contract (such as life insurance, pension trust, or profit-sharing plan, etc.)
- By a qualified *marital trust* with
  The following two mandatory features:
  Income payable at least annually to her for life, and
  General power of appointment, i.e., her power to distribute the property to whomever she wishes by her will or deed

The following are optional with the husband:
Wife's power to use principal
Trustee's power to use principal for her exclusive benefit
Power in each
The husband can provide for the merger of a marital trust with a trust covering the other half, if her power of appointment is not exercised.

- *Accumulation* or *Estate* trust
  Mandatory payment of principal and accumulations to her estate

- A life estate that meets the requirements outline above as a qualified marital trust

ADVANTAGES IN THE MAXIMUM USE OF MARITAL DEDUCTION

- Since the Federal estate tax is progressive, estate-splitting through use of the marital deduction becomes worthwhile. The Federal estate tax starts off at a low 3 percent, goes up very fast, tapers off, and ends at 77 percent. Whatever is taken off the top of the husband's estate will be taxed in his wife's estate at a lower rate, unless she herself has a larger estate. In addition, each estate has a $60,000 exemption, and with this estate-splitting, there is full use of two exemptions.

SOME EXAMPLES, USING HUSBAND'S ESTATE
(Not reflecting credit for State estate taxes)

Adjusted Gross Estate	Tax Without Mar. Deduc.	Tax With Max. Mar. Deduc.	Tax Savings
$60,000	$ -0-	-0-	-0-
120,000	9,500	-0-	$9,500
240,000	44,700	$9,500	35,200
480,000	120,100	44,700	75,400

- The resulting tax-savings make more of husband's property available to his wife after his death.
- The use of a *residuary trust* on the nonmarital part of the husband's estate makes it possible to pass to the children this portion free of estate-tax at his wife's death.
- Use of principal from marital deduction trust and the accumulation of assets in the residuary trusts gives surviving wife an opportunity to increase the estate-tax-free funds that the children will ultimately receive from the residuary.

SOME OBSERVATIONS REGARDING THE MARITAL DEDUCATION

- Care should be taken not to overqualify the husband's estate accidentally. (If $150,000 is left outright to the wife, husband's estate qualifies, but wife's estate suffers extra tax burden.)
- No matter how the marital deduction is used, provision should be made for the simultaneous death of both spouses, to insure the marital deduction for the husband's estate. Adequate provision must also be made for the *common disaster* situation, and the distinction between simultaneous death and common disaster should be made clear.

- Not all "assets" qualify for marital deduction use. Care must be taken in selection and treatment of each asset.
- Provision should be made for payment of estate taxes from residuary share to insure full marital deduction.
- Wife's assets must be considered to determine whether part or all of marital deduction should be used. (Consideration of estate taxes on wife's death without marital deduction)
- Family needs (i.e. education, spendthrift spouse, invalid child) must be considered and should take priority over tax savings.

This is a very technical part of estate planning, which cannot be dealt with summarily. Careful consideration must be given to all circumstances-- individually evaluated. *The result must be custom planned for each individual.*

Have the class discuss how Mr. Everyman's estate could be conserved through proper planning.

Instructors should conform to the American Bar Association's Informative Opinion A of 1959 on the unauthorized practice of law.

Lesson 4

Wills

WILLS--THE LEGAL REQUIREMENTS

WHAT IS A LAST WILL AND TESTAMENT?

- A will is a written instrument executed with the formalities prescribed by law, whereby a person directs the disposition of his property after his death. The term *will* derives from English law, the term *testament* from the Roman or civil law. For practical purposes, they mean the same thing--a person's testimony regarding the disposition of his property.
- The right to make a will is given by law. It is unfortunately often overlooked and lost by default.
- A will is *ambulatory*, i.e., it may be changed at any time by the maker. It *speaks* or takes effect only when the maker dies. It governs the disposition of whatever property the maker owns at the time of his death, not what he owns at the time he makes his will.

WHY SHOULD YOU HAVE A WILL?

- Your property will then go to the persons named and in the amounts that you desire. If you fail to make a will, the law arbitrarily distributes your property. This distribution may not coincide with your wishes.
- It may save you (your estate) money by reducing expenses. The smaller your estate is, the more important this saving is. These savings by a will result from the following factors:
  Property can often be sold, distributed, or handled without the expense of asking a court for authority.
  Estate or inheritance taxes may be reduced.
  The cost of a bond covering the person or persons who will have the duty of administering your estate may be avoided, if your will so directs.
  Broad powers to deal with specific property can be given by will, so that a business may be operated or concluded, or real estate may be sold without losses.

- You may appoint the person you wish to handle your estate (your executor). This alone is a good reason for having a will.

WHAT HAPPENS IF YOU LEAVE NO WILL?

Your property passes in accordance with the laws of descent and distribution, (EPTL Sec. 4-1.1) rather than by your planned distribution. (See the table prepared from EPTL Sec. 4-1.1, in the Appendix.)

Your estate, instead of being managed by the person you designate (the executor named in your will), will be managed by an administrator (normally your closest relative), appointed by the surrogate of the county by letters of administration).

- Frequently disputes (which must be resolved by the court) arise over the right to letters of administration between persons equally entitled to be named. A will would avoid this.
- An administrator generally must be bonded and your estate must pay the bond premium. (In your will you can provide that your executor need not post security on his bond.)
- An administrator is strictly limited by law as to what he can or cannot do. In general, he may only liquidate your assets, pay your debts, and distribute the remainder of your property. He has only limited authority to deal with real property, your business, or other property. In many instances he might be able to act only with specific prior approval by the court, entailing expense to your estate and possible delay in its settlement.

WHO CAN MAKE A WILL?

In New York State, a person 18 years of age or older, "of sound mind and memory," may make a will disposing of real and personal property. (EPTL Sec. 3-1.1)

To make a will you must have testamentary capacity, i.e., your mental capacity must be sufficient to meet all the following:

- You know you are making a will.
- You know the nature and extent of your property.
- You know (whether you leave them anything or not) the persons who would be the natural objects of your bounty (in short, your dependents, your family).
- You are acting freely, under no duress or coercion.

Aliens have the right to make wills, subject to some technical requirements.

WHERE DO YOU EXECUTE YOUR WILL?

Your will should be prepared and executed in accordance with the law of the state where you live. There is no Federal law of wills; each state has its own laws. The important thing is to have your will accepted in the state where you are domiciled when you die and to have it acceptable in any other state where you may own real property.

A will admitted to probate in one state governs the disposition of all of the testator's personal property, wherever located, but only real property located in the state. The testamentary disposition of real property located in another state is governed by the laws and the probate court of that state. Thus, your will should be drawn and executed in conformance with the laws of every state where you own real property.

Change of residence does not invalidate a will. However, if you move to another state you should have your will reviewed to ensure that it would be accepted for probate in that state.

How do you execute your will in New York State? (EPTL Sec. 3-2.1, 3-3.2)

You must have two witnesses. Three are preferable, and some states (e.g. Massachusetts) require three.

It is best that the witnesses not be persons who are to benefit under the will.

Your will must be *in writing*.

- Exceptions are made for a person in actual military or naval service, and for a mariner while at sea. (SCPA Sec. 1404)

You *must sign* your will.

The following formalities should be observed at the signing of your will:

- The testator must announce clearly to each witness that the document is the testator's will. The witnesses do not have to read the will.
- Each witness must be asked and must assent to acting as a witness.
- The testator must sign the will in the presence of all of the witnesses or else the testator must acknowledge his subscription to each witness. Then each witness signs the will at the request of the testator. Each witness should indicate his address.

How do you amend or revoke your will? (EPTL Sec. 3-4.1)

You may revoke your will by executing a new will, or by destroying, or by tearing, cutting, or otherwise defacing it so as clearly to indicate your intention to revoke it.

A revocation of a will revokes all codicils thereto.

You may amend your will by executing a *codicil* that is executed with all the formalities of a will.

Where should you keep your will?

You may leave it with your attorney.

If your executor is a bank or a trust company, they may hold it for you.

You may keep it in a safe deposit box, preferably one to which some person other than yourself has access. (After your death your personal safe deposit box cannot be opened without court authorization.)

The Surrogate's Court of any county in New York State will receive a will for safekeeping.

Wherever you keep your will, retain a copy for reference and review, with a notice as to where the original is stored.

How will your estate be administered if you leave a will?

Your will must be admitted to probate by the Surrogate's Court of the county where you were domiciled at the time of your death. *Probate* gives a will legal effect. The formalities of law attending the probate of a will are designed to assure that only your last will, and not a prior will or a forged or specious document would be accepted as your will.

After your will is admitted to probate, your executor will qualify to act as such by filing his oath and surety where required. If the executor you named in your will has died or for any reason cannot or will not act, the court will appoint someone else. He will be an alternate executor named in your will, or, if you did not name alternates, then a beneficiary named in your will, or some other person having an interest in your estate. (SCPA Sec. 1418)

Your executor will then proceed to administer your estate in accordance with the instructions in your will. He will have the powers you give him and the duty to follow your testamentary directions. He will collect your assets, pay your debts, and pay the taxes on your estate and the expenses of administering it. He will then distribute your estate to the persons you designated. Finally, he will account to the beneficiaries and to the court for every action he has taken. Because your executor is a fiduciary, he will be held personally responsible by the court for all his actions, until finally discharged.

- The person named as executor should be an experienced person or an institution able to take the place of the testator and carry out his wishes. The person you name as your executor should preferably be well acquainted with your affairs and business.
- The executor should be given sufficiently broad powers to meet any foreseeable contingency based on the type of estate he is being called upon to administer. This may include the management of a going business, real estate, investments, and other items of property.

What you may not include in a will

Your will does not control the disposition of all property which you may think of as your own.

- *Joint property* with right of survivorship passes by operation of law to the surviving joint tenant at the moment of your death.
  Persons sometimes feel that if they put all their property in joint ownership all their problems are solved. This is not the case. Contrary to a widely held belief, even if you die first, joint ownership will not save any estate taxes. Anything that can be done by way of joint ownership of real property, a bank account, or anything else, can just as well be done by a will; and what is most important, you, the owner, will not have parted with any part of the property or its control during your lifetime.
  Two forms of *joint* ownership should be differentiated:
  Tenancy-by-the-entirety is a form of joint ownership by husband and wife. It, too, is not affected by a will, as title passes by operation of law to the surviving tenant.

Tenancy in common differs from a joint tenancy in that title of one tenant does not pass to the other (or others) on death, but is part of the deceased tenant's estate, passing according to his will, or by the law of intestate distribution.

- *U.S. Savings Bonds* held in the name of one person payable on death to someone else pass directly to that person, according to Federal law.
- An *insurance policy* is a contract and the proceeds are payable to the persons named therein. You cannot change beneficiaries by your will. Your will has no effect on the distribution of the proceeds unless the policy provides that the proceeds are payable to your estate.

In New York State, certain property is set off by law for the surviving spouse or infant children and does not pass by will. This consists of up to $1,000 in cash and other personal property specified by statute. (EPTL Sec. 5-3.1)

More important than the foregoing is the "right of election of the surviving spouse" (EPTL Sec. 5-1.1). A surviving spouse may have a right to elect to take against the will of the dead spouse. Basically, if the surviving spouse does not receive through the provisions of the deceased spouse's will (and, in certain cases, through gifts, trusts, and joint ownership of property), at least as much as he would have received if the deceased spouse had died without a will, then he is entitled to an "elective share" of the estate. This share is roughly comparable to the amount he would have received under the laws of intestate distribution, but in no event will it be more than one-half of the estate.

Other limitations should be considered.

- You may *disinherit* your children (even though, as above discussed, you cannot disinherit your wife or husband).
- Limitation on charitable gifts. You may leave all of your estate to charity, but if you have parents or issue (children, grandchildren, great-grandchildren) surviving, any of them may contest your will. In that case, the charitable bequest may be limited to one-half of your estate. The contesting parents or issue may receive a share of your estate not exceeding the share they would have taken had you left no will. In addition, your surviving spouse could contest your will in order to receive his elective share. (EPTL Sec. 5-3.3)

WHAT YOU MAY INCLUDE IN A WILL

Subject to the limitations already discussed, any type of property you own may be disposed of by will.

- Personal property
  Tangible personal property, this including furniture, personal effects, china, linen, silverware, stamp collections, boats, etc.
  Intangible personal property, including stocks and bonds, as well as business and professional interests
- Real property, such as a residence and other real estate

TESTAMENTARY TRUSTS You may dispose of property outright or in trust.

- You may create a trust in your will to take effect on your death.
- The general subject of trusts is treated in Lesson 5.

POWERS OF APPOINTMENT You may have the right to dispose of the principal of a trust created by someone else. For example, a husband may leave money in trust with the income to be paid to his widow during her lifetime and the principal to be paid on her death as she may direct in her will.

POUR-OVERS You may provide in your will for all or any portion of your estate to be paid into a trust created by you during your lifetime, or into a trust created by someone else.

SIMULTANEOUS DEATH The law provides for the disposition of the property of persons who die simultaneously or under circumstances making it impossible to determine the order of their deaths. However, you can provide in your will for a different disposition. This may be desirable to preserve the estate-tax marital deduction. *Simultaneous death* and *death in or as the result of a common disaster* are not the same. Persons may die in a common disaster but not simultaneously. Persons may die *as a result of a common disaster* days, months, or even years apart. Misunderstanding and misuse of the terms can be costly in terms of estate taxes.

ADMINISTRATIVE PROVISIONS These do not provide for the disposition of your property, but relate to the administration of your estate by your executor. Some of these are:

- Payment of estate taxes: New York law apportions taxes equally among beneficiaries. This may not be the cheapest way of doing things. You can make provisions to the contrary, for example, that your wife's share of your estate pay no taxes.
- Provision for the payment to minors or others who may be under a legal, physical, or mental disability, without the necessity of appointment of guardians
- Powers may be granted to your executor and trustee to give them the degree of flexibility you would have in managing your own affairs rather than limiting them to the powers given to all fiduciaries by New York's Fiduciaries Powers Act (EPTL Sec. 11-1.1).

FORMAL PROVISIONS There are many clauses which are "standard" such as introductory clauses, revocation of prior wills, payment of debts, etc.

A FEW THINGS YOU SHOULD REMEMBER

A will is always revocable. It can be revoked by a new will, or by destroying the will with the intent to revoke.

A will may be amended or altered in part by a codicil.

A will cannot be in any way amended by deletions, changes, or interlineations made in it by the testator. These will not be given effect and the whole will may be invalidated.

The will and any codicils must be executed in strict accordance with certain laws.

Review your will periodically. Changing conditions affecting your property, family domicile, and your desires, may make revisions desirable. This is particularly important because of the passage of the Tax Reform Act of 1969. You should consult your attorney to see what effect it may have on your estate plan as implemented by your present will. You also should be aware of studies now underway by the Congress which may lead to further important changes in the estate tax and gift tax laws. Such changes could seriously affect your estate plan.

Have the class discuss the type of will Mr. Everyman might or should have.

Instructors should conform to the American Bar Association's Informative Opinion A of 1959 on the unauthorized practice of law.

Lesson 5

Trusts

The development of the *trust* has been called the most distinctive achievement of the Anglo-American legal system.

There are numerous kinds of trusts: express, implied, resulting, constructive, as well as many legal and equitable relationships quite similar to, but not quite the same as trusts. Trusts may be used for private, public, business, or charitable purposes.

We are concerned solely with the *express trust*, "a fiduciary relationship with respect to property, subjecting the person by whom the title to property is held to equitable duties to deal with the property for the benefit of another person which arises as a result of a manifestation of an intent to create it." Further, this discussion is limited to the *personal trust*, an express trust created by an individual in connection with his estate planning.

SOME BASIC TRUST TERMINOLOGY

- *Inter vivos trust*--A trust created by a person during his lifetime (also called a *living trust*). It may be *irrevocable* or it may be *revocable*.

- *Testamentary trust*--A trust created by a person's last will and testament.

- *Grantor*--The person who creates a trust, also called the *settlor*, the *trustor* or, in the case of a trust created by a will, the *testator*.

- *Principal*--The property which is the subject matter of the trust. It may be real or personal, tangible or intangible. It is also called the *corpus* or the *res*.

- *Income*--The earnings realized on the principal, such as interest, cash dividends, rents, and profits.

- *Trustee*--The person who holds legal title to the principal, subject to his duties as trustee. The trustee may be an individual or a corporation.

- *Beneficiaries*--Those for whose benefit this trust is created and maintained. They may be individuals, or charitable, religious, or educational institutions, receiving income, principal, or both.

- *Remaindermen*-- Those who receive what remains of the *principal* on the termination of the trust.

- *Trust instrument*--A written agreement between grantor and trustee creating an *inter vivos* trust; a will creating a testamentary trust. It sets forth the terms of the trust and usually sets forth powers and duties of the trustee. (To the extent that the latter are not specified, the trustee's powers and duties are governed by applicable state law.)

THE TRUST AS A FLEXIBLE ESTATE-PLANNING DEVICE

The outstanding feature of the trust is its flexibility. Like a contract, a trust instrument can be designed to accomplish almost any purpose which is neither illegal nor against public policy. A trust should serve the purposes desired by the grantor and thus should be designed to satisfy individual need. Among the areas to be considered by the individual in creating a trust are the following:

SPLIT TITLE to ownership of the trust's assets
- *Legal* title in trustee
- *Beneficial* title in beneficiary

COMMENCEMENT DATE
- At present--living trust
- At death--testamentary trust

DURATION

The duration of a private trust, as distinguished from a trust for charitable purposes, is limited by the rule against perpetuities. In simple terms, it is a rule against "tying up property forever." At common law the rule provided, in effect, that the maximum duration of a trust was the life span of some designated person living at the creation of the trust, plus 21 years. In New York the rule has been changed by statute to provide: "No estate in property shall be valid unless it must vest, if at all, not later than 21 years after one or more lives in being at the creation of the estate and any period of gestation involved. In no case shall lives measuring the permissible period of vesting be so designated or so numerous as to make proof of their end unreasonably difficult." (EPTL Sec. 9-1.1) Typical examples of the duration of trusts are these:

- For one lifetime--marital trust
- While any family member is living--flexible family trust
- During minority of the children--minority *pool* trust
- For a term of years--short-term trust
- In perpetuity--charitable trust or foundation

FUNDING

Placing of cash, securities, or other property in the trust
- At the time of the creation of a living trust
- By additions to the trust thereafter

Placing only life insurance policies in a living trust (limited funding)

POUR-OVER

Pour-over is the passing of property from one trust to another, or from one's estate to an existing trust.

DEGREE OF CONTROL

- Retained by the grantor, as in a revocable trust
- Shared in whole or in part with a co-trustee or third party, such as the beneficiary, a business partner, an investment counsel, or a spouse
- Released by the grantor to one or more third parties, as in an irrevocable trust

Degree of trustee's discretion over the distribution of *income*

- No discretion (income paid at regular intervals or in regular amounts to specified beneficiary or beneficiaries with or without accumulation of income)
- Discretion to pay income to multiple beneficiaries in equal or unequal amounts. (Income can be paid to a child even while the wife is living: "sprinkle and spray.")
- Discretionary accumulation of income (if outside sources of income or other sources of income make it wise to do so)
- No discretion--compulsory accumulation of income

NOTE: The Tax Reform Act of 1969 provides for the taxation of accumulated income on distribution to beneficiaries in substantially the same manner as if the income had been distributed to them as earned. Thus, the new law largely removes income tax reasons for accumulating income. However, there are other good reasons for the compulsory accumulation of income.

Degree of trustee's discretion over invasion of *principal*

- No discretion to invade principal. (Rarely recommended because of possible future needs.)
- Discretionary invasion: the grantor can authorize his trustee to invade the principal under certain conditions, or for specified purposes, some of which are:
  - For general support, welfare, and maintenance of the beneficiary
  - To maintain a standard of living
  - For emergency illness of the beneficiary
  - For children's education
  - After consideration of beneficiary's other income sources (e.g., exhaustion of marital share first)
  - For some special purpose, such as helping a child to establish a business or profession, or purchase a home

NOTE: Where the principal of the trust is to be paid to charity after the life or lives of the individual beneficiary or beneficiaries of the income interest of the trust, the power to pay out principal to income beneficiaries must be drafted with care if an estate tax deduction for a charitable remainder is contemplated. This is a matter for an attorney's consideration. Further, the Tax Reform Act of 1969 severely restricts deductions for gifts to charity. This, too, is a matter for an attorney's consideration.

- Unlimited discretion to invade without any standards to be met before distribution of principal by trustee, i.e., trustee may invade principal for any reason deemed desirable.
  Trustee may be directed to give certain priorities among beneficiaries, e.g. wife's needs to take priority over the children's needs.
  Precatory words expressed in trust instrument may serve as a guide to the trustee, but do not control him: (the grantor may guide the trustee by stating, e.g., "it is my hope that my trustee will be generous with my nephew in helping him to establish a professional office").

DISTRIBUTION OF PRINCIPAL

Methods of determining time and amount of payout(s) of principal

- Limited privilege of withdrawal
  As to amount (e.g., up to 5 percent or $5,000 per year, in order to preserve estate-tax advantages)
  Note: The Tax Reform Act of 1969 and further tax law changes being considered in the Congress make it imperative that tax-oriented estate plans be reviewed periodically by competent counsel.
  As to attainment of ages (e.g., after 25 and before 30, after 30 and before 35, after 35 and before 40)

- Unlimited privilege of withdrawal
  After attainment of age (e.g., upon attainment of majority--age 21)
  At any time

- Automatic payments of a portion of the principal to the beneficiary
  Specified fractions or amounts of principal
  At specified ages, or at occurrence of specified events

- Complete payout of principal at a specified time or age or event, such as on death of widow, or other income beneficiary

DESIGNATION OF BENEFICIARIES

Identity of the trust beneficiaries

- Wife alone
- Family group (e.g., wife, children, and parents, or other relatives)
- Children through minority or educational periods
- Charitable, religious, or educational organizations

POWER IN TRUST

In New York and most other states, an interest in the remainder of a trust which must, by the terms of the trust and the impact of the Rule Against Perpetuities, pass to a minor, may nevertheless be safeguarded during his minority through its retention by the trustee under a "power in trust" (EPTL, Chapter 10).

SOME SPECIFIC FUNCTIONS OF A TRUST

To provide professional management of the grantor's property during his lifetime, in the event of his incapacity, or after his death.

To channel property distribution to the selected beneficiary to the exclusion of others. For example:

- The second spouse of a widow after remarriage
- A son-in-law
- A daughter-in-law
- Wife's relatives
- Husband's relatives
- Any "objectionable" relatives

To lessen an income-tax burden by shifting funds for education, or support of a relative or friend, (caveat: trust income used to discharge a legal obligation of the grantor will be taxed to the grantor).

To keep a family business intact until sound decisions can be made about the sale or continuation.

- To effect prompt and efficient transfer of business interests and life insurance proceeds through use of a trustee

To build up a reservoir for payment of estate and inheritance taxes, administration and probate expenses, etc.

To take care of an invalid or incapacitated family member.

To pool funds for the care of minor children if both parents are deceased.

To avoid the necessity of guardianship of property for children until they attain legal majority.

To accomplish investment objectives.

To reserve income to property-owner during lifetime, but to make a present irrevocable, ear-marking of principal for payment to a selected beneficiary, such as a family member or a charity at death of property owner.

To put into operation a separate entity (e.g., a family foundation)

- Provide a vehicle for current annual charitable giving
- Distribute to charity the remainder of an estate
- Create separate taxpayers through multiple trusts for bona fide purposes

Note: The Tax Reform Act of 1969 makes important changes in the deductibility of contributions to charity.

To permit one spouse to make a distribution to the other spouse that is more restrictive in nature than that provided for under the laws of descent and distribution. (Section 5-1.1 of the Estates, Powers and Trusts Law of New York.)

ADVANTAGES OF A TRUST

During periods of travel, illness, or other incapacity, the trustee carries on investment and financial affairs of grantor (if living) or beneficiaries.

- In case of travel or physical incapacity through accident or illness, personal details and payment of medical, household, and other bills can be handled promptly by the trustee, thus affording freedom from anxiety.
- In case of late-life incapacity, this personal, direct management by the trustee by-passes the fairly expensive and sometimes rather unpleasant (from a family standpoint) legal process known as court adjudication of incompetency.

Systematic recordkeeping, to provide accurate information for tax-reporting and accounting purposes.

Property owner has opportunity to observe his overall planning in action while living if he coordinates an active living trust with his will.

A trust can eliminate:

- Delays common in the probate of wills and the settlement of estates
- Controversy in which a will may be contested by disgruntled relatives

Privacy as to family affairs is possible to a greater degree than in the case of a will, which is a matter of public record.

A trust permits transmission of property in a modern, economical fashion that may reduce probate expense, executor's commissions, and attorney's fees (e.g., trustee may hold title to out-of-state realty thus avoiding ancillary probate.)

Location (situs) of management can be permanently fixed regardless of property owner's future domicile change.

DISADVANTAGES OF A TRUST

Lack of control by beneficiaries

Lack of control by grantor

- Partial--in some revocable trusts
- Temporary--revocable trusts, or irrevocable trusts for a short term of years.

- Permanent--the long-term irrevocable trust (and, of course, all testamentary trusts).

The mere establishment of a trust often creates a misunderstanding on the part of the beneficiary who may believe that the grantor lacked confidence in the beneficiary. (For example, where a testator leaves his entire estate in one or more trusts for his wife and family, she may be affronted by the arrangement, especially if she helped build the estate and had expected to receive the property outright.)

Deprives beneficiary of responsibility for and experience of managing property himself.

"Spoils" future generations.

Pays another to do what one can and should do for himself.

COST OF TRUSTS

Trustee's commissions are usually computed and retained annually by the trustee on the basis of the market value of the trust assets on each anniversary of the trust. In New York, unless the trust instrument provides otherwise, commissions are payable one-half from principal and one-half from income. In addition, the trustee is entitled to one percent of all principal paid out, upon final termination of the trust. (SCPA Sec. 2309)

- In the case of a testamentary trust, trustee's commissions are fixed by the laws of the State of New York unless the will provides otherwise.

- In the case of an *inter vivos* trust, commissions are a matter of agreement between the settlor and the trustee. If the instrument is silent, the statutory commission schedule for testamentary trustees applies. Generally, some part or all of the trustee's commission is deductible for income tax purposes. Naturally, this is subject to future changes in tax laws.

Court costs and attorney's fees are payable when an accounting is made for a trust, whether intermediate or final.

SOURCE OF TAX SAVINGS

Many tax savings can be made through the use of the trust device, even though opportunities for such savings have been restricted by the Tax Reform Act of 1969 and may be further restricted by tax (gift and estate taxes) reform proposals now under study in the Congress. However, Mr. Everyman should consider the trust primarily as a means to accomplish personal objectives, such as the protection of his family, rather than as a device for the avoidance of taxes. For the average man, the latter approach can prove costly both in terms of money and sacrifice of family security. Payment of taxes is not inherently sinful.

Income tax savings can be made by:

- A short-term trust, or a trust for the minority of the beneficiary (IRC Sec. 2503[c])
- An irrevocable living trust for beneficiaries other than the grantor
- Discretionary accumulation of income in a residuary trust, coupled with spending of income and estate-taxable principal in a marital trust (Income is now taxed to beneficiaries on distribution as though they had received it as earned.)
- A charitable trust (e.g., a family foundation as a receptacle for annual giving), subject to the restrictions of the Tax Reform Act of 1969
- A reserved-income trust with a charitable remainder by you, subject to the restrictions of the Tax Reform Act of 1969

Estate tax savings can be made by:

- An irrevocable living trust for beneficiaries other than the grantor
- A testamentary trust with limitations on the beneficiary's control
- A charitable trust (But note that tax advantages of charitable remainder trusts are limited by the Tax Reform Act of 1969.)

Gift tax savings can be made by:

- A "minority" trust created under the revenue code provisions (IRC Sec. 2503[c])
- An irrevocable living trust where the lifetime exemptions have *not* been used

Highlights of the Tax Reform Act of 1969:

- A trust with remainder to charity (income to creator of the trust or other noncharitable beneficiary)

  The availablility of a contribution deduction--for income, estate, or gift tax purposes--will be limited to situations in which the trust qualifies as an "annuity trust," a "unitrust," or a "pooled income fund." An *annuity trust* is one which specifies the annual amount to be paid the income beneficiary in dollar amounts. A *unitrust* specifies the amount going to the beneficiary as a fixed percentage of the value of the trust assets as determined each year. A *pooled income fund* is a trust maintained by an educational or charitable organization to which the remainder interest is contributed; property transferred by a number of donors is commingled.

Effective date: For income and gift taxes, the rules apply to transfers in trust after July 31, 1969. For estate tax, the rules apply to estates of decedents dying after December 31, 1969, except that they do not apply in the case of trusts created by wills made before October 9, 1969, by persons who die within 3 years thereafter or are prevented from changing their will because of disability; neither do they apply in the case of trusts created prior to October 9, 1969 which provide for an irrevocable gift to charity.

- Trusts with income to charity (principal afterwards to go to the creator of the trust, or other noncharitable beneficiary)

  A charitable contribution deduction for income tax purposes is not to be allowed where a person gives an income interest to charity in trust unless he is taxable on the trust income. Even where he is so taxable, the deduction will not be allowed unless the charity's income interest is a guaranteed annuity or a fixed annual percentage of the value of the trust property. Applies to transfers in trust after July 31, 1969.

- Charitable trust reverting after 2 years

  An individual no longer can escape income tax on the income from property placed in a trust to pay the income to a charity for a period of 2 years, with the principal reverting to him afterwards. Now at least 10 years must elapse before the principal returns. Applies to transfers in trust after April 22, 1969.

- Gifts of the use of property

  No deduction is allowed where a contribution of the right to use property for a period of time is made after October 9, 1969.

- The "unlimited" charitable contribution deduction is to be gradually eliminated.

- Foundations--A new 4 percent "excise tax" on net investment income begins in 1970.

- Gifts of appreciated property to charity--The appreciation is to be taken into account and may be taxable to grantor in several situations.

- Charitable contributions of trusts

  Deductions to trusts for the amounts of their current income "set aside" for charity are no longer available, except in the case of charitable remainder trusts which are "annuity trusts" or "unitrusts." Decedents' estates, and trusts established on or before October 9, 1969, or under wills in existence on that date, are, in general, exempt from the new rule. A "pooled income fund" is allowed to deduct amounts set aside for charitable purposes to the extent of the fund's long-term capital gain income.

- Income of accumulation trusts

  Where the trustee is either required, or is given discretion, to accumulate income for future distribution to the beneficiaries, they will be taxed on distributions received in substantially the same manner as if the income had been distributed to them as earned, instead of being accumulated. The 5-year "throw-back" rule is eliminated and replaced by an unlimited throwback rule with respect to an accumulation distribution. It applies, in general, to taxable years beginning after December 31, 1968.

SELECTION OF A TRUSTEE

(Discuss with the class the importance of selecting a trustee and some of the factors to be considered in making this selection. Also discuss factors to be considered in deciding whether a trust is desirable in the first place.)

After consideration of integrity, the prime consideration in the selection of a trustee is his competence. Can he do the job? This consideration obtains whether the proposed trustee be an individual or a corporate fiduciary. In making a judgment of competence, the following are factors to be considered.

- Size of the trust fund

- Composition of the trust fund
  - A relatively small savings account only
  - Large portfolio of stocks and bonds
  - Closely held corporation
  - Income-producing real estate

- Duties to be performed
  - Retaining fund until children ready for college
  - Managing a large investment portfolio
  - Managing family business
  - Gradual liquidation of art collection and reinvestment of proceeds

- Discretion to be exercised
  - Investment management
  - Sprinkling income among family group
  - Invasions of principal for benefit of widow

- Probable duration of trust

- Financial responsibility of trustee

- Age and health of indiyidual trustee
  - Who will serve upon his death or resignation
  - What will happen if he becomes ill or incompetent

- Possible conflicts of interest
  - Trustee-remainderman vs. income beneficiary
  - Half owner of close corporation holding other half interest as trustee

- Location of trustee in relation to beneficiaries, where personal contact necessary or desirable

Desirability of co-trusteeship

- Added expense to trust
- Possible stalemates
- What service each co-trustee will be expected to provide

Trust your trustee

- If you have confidence in your trustee, give him the full discretion necessary to administer the trust effectively.
- If you do not have confidence in your trustee, reconsider your selection.

ESTIMATING COMMISSIONS OF FIDUCIARIES

The table below shows the amount of an executor's commission and the annual commission of a trustee on estates and trust funds of various sizes. The figure in the first column when read with reference to an executor's fee is the "commissionable estate," which may be substantially less than the taxable estate.

Estate or Trust Fund	Executor's Fee	Trustee's Annual Fee
$ 50,000	$ 1,875	$ 250
100,000	3,625	500
150,000	5,375	750
200,000	6,875	1,000
300,000	9,875	1,500
400,000	11,875	1,750
500,000	13,875	2,000
600,000	15,875	2,250
700,000	17,875	2,500
800,000	19,875	2,750
900,000	21,875	2,950
1,000,000	23,875 (1)	3,150 (2)

(1) Add $2,000 for each additional $100,000 in Column 1.
(2) Add $200. for each additional $100,000 in Column 1.

EXECUTOR'S COMMISSION

New York law states precisely what fee an executor must be allowed by the probate court. It is payable, usually, at the end of the administration.

The statutory rates apply only to assets coming into the hands of the executor for administration. Therefore, in New York, commissions are not allowed on property passing outside the will--such as the proceeds of life insurance paid to a widow, or jointly held property. Nor are commissions allowed on real or personal property specifically disposed of by the will.

An example will illustrate: A man's taxable estate might total $500,000, made up of these assets: (1) a $75,000 home in joint names with his wife, (2) $20,000 in joint bank accounts, (3) $100,000 in life insurance payable to his wife, (4) a $5,000 coin collection left by will to his son, and (5) $300,000 in cash, securities, and other property held in his own name. The statutory commission rates would apply to $300,000, not $500,000.

COMMISSIONS FOR EXECUTORS

4% on the first $25,000
3½% on the next $125,000
3% on the next $150,000
2% on the balance over $300,000

For a commissionable estate of $300,000 or more, a shortcut way to compute the executor's fee is to multiply the amount subject to commissions by .02 and add $3,875. Thus, on a $300,000 commissionable estate--as in our example--the fee will be $9,875; i.e., .02 X $300,000 plus $3,875.

TRUSTEE'S COMMISSION

A trustee's commission for managing a New York trust--whether created by will or during life by agreement--is also defined in the law. There are two parts: an annual fee, payable year by year, and a termination fee, payable when the trust ends. The termination fee is 1 percent of the value of the principal paid out. The annual fee is computed by applying this graduated scale of rates to the principal:

1/2 of 1% on the first $300,000
1/4 of 1% on the next $500,000
1/5 of 1% on the amount over $800,000

On trusts of $800,000 or more, a quick calculation of annual commissions may be made by multiplying the amount of the fund by .002 and adding $1,150. For example, the annual fee on a $800,000 trust will be $2,750; i.e., .002 X $800,000 plus $1,150. Unless otherwise stipulated, a trustee's annual commission is charged one-half to principal and one-half to income.

MORE THAN ONE FIDUCIARY

If there is more than one executor or trustee, and the estate or trust fund is less than $100,000, the law provides that the co-executors or co-trustees shall split the commission of a sole fiduciary unless the will or agreement provides otherwise. If the estate or fund exceeds $100,000, each fiduciary is entitled to the full commission that a sole trustee would get. However, if there are more than three fiduciaries, they share the aggregate commission that would be due to three fiduciaries.

SPECIAL SITUATIONS

Special rules apply to charitable trusts, trusts whose income is accumulated, and situations where the fiduciary is called upon to collect rents and manage real estate.

ESTIMATING ADMINISTRATION EXPENSES

(The figures below are based on national averages and subject to local adjustment)

Gross Probate Assets		Administration Expenses	
From	To	Amount on Column 1	*Rate on Excess
-0-	$50,000	-0-	8.6%
$50,000	100,000	$4,300	7.8
100,000	200,000	8,200	7.2
200,000	300,000	15,400	6.8
300,000	400,000	22,200	6.5
400,000	500,000	28,700	6.3
500,000	600,000	35,000	6.0
600,000	700,000	41,000	5.9
700,000	800,000	46,900	5.8
800,000	900,000	52,700	5.7
900,000	1,000,000	58,400	5.6
1,000,000	1,500,000	64,000	5.6

*(Note that the rate diminishes as the estate grows larger.)

"Administration Expenses" include executors', attorneys', accountants', and appraisers' fees, court costs, and miscellaneous items such as travelling and storage expenses. These costs are, with few exceptions, as sure as taxes, and the necessity for cash to meet them must be considered.

In computing shrinkage and in determining the amount of cash, insurance, and liquid assets which should be available to the executor of the estate, both administration expenses and estate taxes have to be reckoned. The impact of both of these can be damaging and can make inroads upon a family-controlled business-interest or necessitate the sale of other property a family intended to hold.

Lesson 6

Problems of Business Owners, Employees, and Professionals

PROBLEMS AFFECTING BUSINESS OWNERS

TYPES OF BUSINESS INTEREST (Including manufacturing, distribution, sales, service, farming, etc.)

- Sole proprietorship
- Partnership (joint venture)
- Family (closely held) corporation

DECISIONS NEEDED

The major decision to be reached before the businessman's death is whether the business interest is such that it can be continued after his death or must be liquidated. Factors involved in reaching this decision are:

- Is the business owner's personal service required?
- Has a "good-will" factor been built up?
- Can the family provide continuing management ability?
- If not, can the business afford hired management?
- Could the business be sold and the proceeds invested so that a more substantial return might be realized?
- What are the future prospects of the business?
- Can the family afford the inherent risks of the business?
- Can the wife perform services to justify a salary in the light of IRS restrictions?

Assuming the decision has been reached that the business can be continued by the family, the following areas of business planning must be considered.

- Requirements for cash (Sec. 303, redemption)
  - Estate taxes, which must be paid within 15 months may, under certain conditions, be paid out over a 10-year period.
  - Working capital for added costs incurred during transitional period.
    - Training the management of the successor
    - Temporary decrease in sales
  - Credit requirements (debts of the business personally secured by the decedent)

- Planning to provide, or reduce needs for cash
  - Life insurance owned by business
  - Gifts of interest in business
  - Use of classes of stock in closely held corporation
    - For gifts during lifetime, without surrendering control
    - For bequests to charities after death

To family foundations
Fix values by buy-and-sell agreements
An agreement whereby a business owner's entire interest is purchased from his estate
Fixing of value for estate tax purposes eliminating controversy with tax authorities
Pension or profit-sharing plans to buttress the basic financial position of the family

- Planning for continued management
  Specific provisions in a will directing continuance, allowing discretionary continuance
  Special powers should be given to executor and trustee
  Bringing employees into management

Assuming the decision has been reached that the business must be sold or liquidated, the following areas of business planning must be considered.

- Interim operation
  Specific provisions in the will directing the liquidation or sale of the business
  Special powers for executor to provide orderly disposition
  Interim cash requirements

- Problems in disposition of business by types
  Selling the sole proprietorship
  How to reach the potential buyer
  Contact suppliers and distributors
  Employees and associates
  Business brokers, trade publications, banks
  Preparation of business for orderly transfer
  Separation of multiple business activities
  Possibility of incorporation
  Selling the partnership interest
  Sale of partnership interest to surviving partners vs. dissolution and liquidation of partnership
  Selling a corporation interest, using a buy-sell agreement
  Will the interest be bought by stockholders (a cross-purchase agreement) or by the corporation (a stock-redemption agreement)?
  Available surplus
  Attribution rules (Internal Revenue Code, Sec. 302 et seq.)
  Possible capital gains taxes on corporation

(The Tax Reform Act of 1969 increases the alternative rate on net long-term capital gains of corporations from 27½ percent (including the surcharge) to 28 percent (excluding the surcharge) for 1970, and to 30 percent thereafter. Capital losses of corporations may now be carried back 3 years, as well as forward 5 years, for tax years beginning after December 31, 1969.)

Is the purchase obligatory?
Factors involving price determination
Valuation of business
Future prospects of the business
Percentage of ownership

Terms of payment
  Cash
  Installments
  Security for future performance of terms
Funding
  Life insurance (Proceeds are tax-free.)
  Corporate cash position
  Corporate cash flow
  Post-death elections required (Subchapter S Corporations)

PROBLEMS AFFECTING THE EMPLOYEE ESTATE

THE BENEFITS AVAILABLE TO HIS ESTATE

- Options under pension or profit-sharing plan
- Insurance
  Personal life insurance
  Group life insurance
- Stock options, stock bonus plans, and restricted stock plans
  Qualified or nonqualified plans
  Restricted stock now taxable as received
- Deferred compensation arrangements

PLANNING TO REDUCE DEATH TAXES

- Irrevocable transfer of group life insurance
- Coordination of employee benefits with personal assets

PLANNING TO REDUCE INCOME TAXES

- Capital gains vs. normal income tax
- Lump-sum distributions from qualified retirement and profit-sharing plans are now taxed as ordinary income rather than as capital gains, with respect to employer contributions made after 1969.

SOCIAL SECURITY BENEFITS

THE PROFESSIONAL'S ESTATE

H.R. 10 OR "KEOGH" RETIREMENT PLAN FOR THE SELF-EMPLOYED

- Up to $2500 annual tax deferment
- Need to cover employees

PROFESSIONAL CORPORATIONS

- Provide employee benefits such as pension and profit sharing plans, and other group insurance plans.
- Other estate planning advantages can be obtained from the incorporation of a professional practice, but the detail is beyond the scope of this publication.

PROBLEMS OF BUSINESS OWNER AND EMPLOYER COMMON TO PROFESSIONAL GROUPS ALSO

ESTATE PLANNING CONSIDERATIONS WHERE THE BUSINESS OF THE PROFESSIONAL DIES WITH HIM

Discuss the special problems Mr. Everyman should consider in his estate planning.

Instructors should conform to the American Bar Association's Informative Opinion A of 1959 on the unauthorized practice of law.

APPENDIX

INFORMATIVE OPINION A OF 1959
August 1959

Committee on Unauthorized Practice of Law
American Bar Association

ESTATE PLANNING

This Committee has received inquiries concerning the propriety of the conduct of corporations and individuals who are not lawyers but who, through advertisements, brochures, orally or otherwise, solicit legal work or hold themselves out to the public as being available to give legal assistance in the field of estate planning or to do the whole job of planning an estate.

The phrase "estate planning" has come into existence in recent years to refer to the orderly arrangement of an individual's assets so as to provide most effectively for the economic needs of himself while living and of those dependent upon him after his death. At the outset it should be recognized that there are certain lay activities which are legitimate aspects of estate planning and which do not involve legal work, but which are in the nature of an analysis of the facts and assets of an estate in relation to economic needs, and may extend to giving general information as to laws affecting the disposition of estates, though without any specific application thereof to a particular estate or individual situation. These activities may be properly performed by persons who are not lawyers, and are discussed later in this opinion. In general, however, pursued to its proper conclusion, estate planning necessarily involves the application of legal principles of the law of wills and decedents' estates, the law of trusts and future interests, the law of real and personal property, the law of taxation, practice in the Probate and Chancery Courts, or other fields of law. When such is the case, the work involved in estate planning includes legal research, the giving of legal advice, or the drafting of legal instruments.

There can thus be no question that estate planning, except where it is in the nature of an analysis of the facts and assets of an estate as above described, involves legal work and constitutes the practice of law. When engaged in by an individual who is not a lawyer, or by a corporation, it is the unauthorized practice of law. Nor does it become any the less the practice of law because the suggestion is made that the legal advice given or legal work done should be reviewed by an attorney. It is well settled that both corporations and laymen are prohibited from practicing law directly, and that they may not practice law indirectly by hiring lawyers to practice law for them. Accordingly, neither corporations nor laymen may engage in estate planning by soliciting the legal work involved and then

hiring lawyers to perform it. This is also the unauthorized practice of law. In addition, under Canon 47 of the Canons of Professional Ethics of the American Bar Association no lawyer shall permit his professional services, or his name, to be used in aid of, or to make possible, the unauthorized practice of law by any lay agency, personal or corporate.

It is elementary that under Canon 27 lawyers are forbidden to solicit legal employment by circulars, advertisements, or otherwise. Thus, no lawyer may solicit legal work in the field of estate planning or be employed to do such work for a corporation or a layman which does. But the public could not be protected by prohibiting the lawyer from soliciting legal work in the field of estate planning, if at the same time laymen and lay agencies were permitted, in any guise, to advertise a claimed legal competence in this field. It should be clear, therefore, that the holding out by any lay agency to the public, directly or indirectly, overtly or subtly, of its willingness to perform legal services in the field of estate planning is itself the unauthorized practice of law. Also, no lay agency may hold itself out to the public as willing to do the whole job of "estate planning" without becoming engaged in the unauthorized practice of law.

In addition, the lawyer-client relationship requires a duty of absolute loyalty to the client, and undivided allegiance. Under Canons 6 and 35 of the Canons of Professional Ethics, the lawyer cannot permit his professional services to be controlled or exploited by a lay agency intervening between him and his client.

Also, under Canon 34 lawyers may not divide fees with laymen, and this principle applies to fees for legal work in the field of estate planning. Moreover, the sharing by a layman of a lawyer's fees constitutes the unauthorized practice of law.

Illustrative of the treatment of the subject in the Courts in the decision of the Superior Court of Cook County, Illinois, in *Chicago Bar Association* vs. *Financial Planning, Inc.**, decided March 21, 1958, in which the court held that certain estate planning services involved the giving of "legal advice on some of the most important problems which can arise during a man's lifetime and after his death," adding that "Even if this advice were confined to tax savings alone, it still would amount to the practice of law"---and "the contention that the advice is comprised merely of suggestions, and is always subject to be reviewed by a lawyer, is no excuse for the conduct of the defendants. The practice of law should be confined to lawyers without the interposition of unauthorized practitioners who solicit this business directly or indirectly."

The decree in this case permanently enjoined the defendants, their agents and employees from:

(a) Giving legal counsel and advice,

(b) Rendering legal opinions,

(c) Preparing, drafting and construing legal documents,

*This case is reported in 26 Law Week 2662, and 24 Unauthorized Practice News No. 2, p. 29.

(d) Preparing estate plans which embody legal analysis, counsel and advice,

(e) Holding themselves out as persons who prepare estate plans embodying legal analysis, counsel and advice,

(f) Charging and collecting fees for legal counsel, advice, or services rendered by them or their agents, or employees,

(g) From practicing law in any form, or holding themselves out as having a right to practice law, or soliciting employment to prepare estate plans embodying legal analysis, counsel and advice, or from charging, or collecting fees, or payments for legal services rendered by said defendants and each of them or their agents, or employees.

It is not intended by the opinion of this Committee to proscribe activities of those groups which serve various fields related to estate planning unless they involve the performance of legal services as outlined herein. Activities geared to motivating the individual concerned to do something about his affairs and to seek the advice of his own lawyer as early as possible, preferably from the outset, with regard to the development of an over-all estate plan, are in the public interest. Advice on matters of law with respect to particular factual situation of the individual concerned, however, must not be given.

The activities of lay groups described above should conform to the standards of propriety set forth in the several Statements of Principles developed through the Conference method between the American Bar Association and various business and professional groups. Moreover, because of the shadowy borderline between an analysis of facts and assets of an estate and the application of legal principles to them it is clearly within the spirit of the several Statements of Principles that the activities of these groups should be performed in close cooperation with the client's own attorney. It is contemplated that any disputes which may arise with respect to the activities of such business and professional groups shall be governed by such Statements of Principles. The understandings reached in these Principles have served to encourage the public to seek proper legal guidance, the lay groups not to transgress upon the sphere of activity properly reserved for the legal profession, and to bring about better understanding and cooperation between these groups and the Bar.

F. Trowbridge vom Baur, Chairman, Washington, D.C.
Wayland B. Cedarquist, Chicago
E. N. Eisenhower, Tacoma, Washington
Jonathan F. Ells, Winsted, Connecticut
Terrell Marshall, Little Rock, Arkansas
H. H. Perry, Jr., Albany, Georgia
Raymond Reisler, Brooklyn, New York

Case-Problem Analysis

Who will plan your estate if you make no will?

PARTIAL TABLE OF THE NEW YORK LAWS OF DESCENT AND DISTRIBUTION

If a resident of the State of New York dies without leaving a will, the planning as to heirs and distribution of property will be made according to the New York laws of descent and distribution (Art. 4, EPTL).

The following table which gives examples from the law effective September 1, 1967, may be helpful in ascertaining the difference between an intestate distribution and the distribution Mr. Everyman might desire under a will.

MARRIED MAN OR WOMAN WITH ONE CHILD OR DESCENDANTS OF THAT CHILD

Wife OR husband receives:	Child receives:
$2,000 + ½ of residue.	Remaining ½ of residue. (Grandchildren take deceased child's share)

MARRIED MAN OR WOMAN WITH 2 OR MORE CHILDREN OR DESCENDANTS OF THOSE CHILDREN

Wife OR husband receives:	Children receive:
$2,000 + 1/3 of residue.	Remaining 2/3 of residue divided equally. (Grandchildren take deceased child's chare)

MARRIED MAN OR WOMAN WITHOUT ANY DESCENDANTS

If parents survive:		If no spouse survives:	If no parents survive:
Wife OR husband receives:	Parents receive:	All to parents	All to surviving wife or husband.
$25,000 + ½ of residue.	Remaining ½ of residue.		

WIDOW OR WIDOWER WITH ONE OR MORE DESCENDANTS

All to child or children, divided equally. (Grandchildren take deceased child's share)

UNMARRIED MAN OR WOMAN OR A WIDOW OR WIDOWER WITHOUT ANY DESCENDANTS

If Parents Survive:

Mother receives: ½ of estate. Father receives: ½ of estate.

NO SURVIVING PARENTS, BUT SURVIVED BY 1 OR MORE BROTHERS, OR SISTERS

All to brothers and sisters, divided equally.

IF NO PARENTS, BROTHERS, SISTERS OR THEIR DESCENDANTS SURVIVE

All to grandparents, divided equally.

IF NONE OF THE ABOVE SURVIVES, AND THERE IS NO WILL, ALL OF THE PROPERTY GOES TO THE STATE OF NEW YORK.

CLIENT INFORMATION

FAMILY

Name: *John Everyman* Age: *45*

Residence Address: *12 Home Parkway, Anytown, New York* Phone: *123-7654*

Name of Firm: *Northeastern Widget Corporation*

Business Address: *100 Main St., Anytown, New York* Phone: *321-4567*

Marital Status: S ___ M X D ___ W ___ Marriage Date: *August 1, 1948*

Spouse: *Jeanne Everyman* Age: *42*

Name	Age	Children Addresses	Activity	Grandchildren (Names and Ages)
Joan	15	Home	School	None
Jeremy	12	Home	School	None
Jeffery	10	Home	School	None

ADVISORS

Attorney: _____ Accountant: _____

Life Underwriter: _____ Invest. Counsel: _____

Bank Affiliations: _____

SUMMARY OF PRESENT WILLS

Husband's Will: Yes Date: 1954 Wife's Will: None Date: ---

Entire estate outright to wife, if living, otherwise to parents.

PERTINENT BACKGROUND INFORMATION AND FAMILY OBJECTIVES

Relatives to be Considered: None

Anticipated Inheritances: None

Entire estate to be available to wife, if she survives, with adequate provisions for children in the event both husband and wife die in a common disaster.

Certain nieces and nephews to be considered in the event that the entire family goes in a common disaster or before both estates have been distributed.

FAMILY INCOME AND GIFT STATUS

INCOME STATUS	HUSBAND	JOINT OR SOLE?	WIFE
Salary or Professional Income	$12,000.00	Husband	$ -0-
Bonuses or Commissions			
Dividends	375.00	Joint	375.00
Interest	392.50	Joint	392.50
Net Rents or Royalties			
Business Profits			
Annuity and/or Trust Income			
Social Security Benefits			
Pension or Profit-Sharing			
Other			
TOTAL INCOME	$12,767.50		$ 767.50

GIFT STATUS	HUSBAND	SPLIT OR SOLE?	WIFE
Annual Exclusion Used?	No	—	No
Lifetime Exemption Used?	No	—	No
Cumulative Total Tax to Now?	—	—	—

COMPOSITE OF FAMILY NET WORTH

FAMILY ASSETS:	HUSBAND	TYPE OF OWNERSHIP	WIFE
Cash Accounts:			
Checking Accounts	$ 500	Joint in both spouses	$ 500
Savings Accounts	2,500	Joint in both spouses	2,500
Savings & Loan Shares	2,000	Joint in both spouses	2,000
Investments:			
Bonds, Taxable	5,000	Joint in both spouses	5,000
Bonds, Tax-exempt			
Stocks, Preferred			
Stocks, Common	6,200	Sole in each spouse	1,200
Mutual Funds	3,800	Joint in both spouses	3,800
Business Interests:			
Close Corporation	20,000	Sole in husband	
Partnership			
Sole Proprietorship			
Joint Venture			
Real Estate:			
Residence	20,000	Joint in both spouses	20,000
Summer Home			
Income-producing			
Non-income-producing			
Personal Life Insurance:			
On Husband's Life	40,000	Sole in husband	
On Wife's Life			
Employee Benefits:			
Group Life Insurance			
Pension Death Benefit			
Profit-Sharing Death Benefit			
Savings			
Deferred Compensation			
Tangible Personalty:			
Autos, Boats	1,000	Joint in both spouses	1,000
Furs, Jewelry			
Furniture, Silver, etc.	4,000	Joint in both spouses	4,000
Obligations (Held as Creditor):			
Notes, Accts. Receivable			
Mortgages			
TOTAL ASSETS	$ 105,000	JOINTLY OWNED $ 38,800	$ 40,000
FAMILY LIABILITIES:			
Loans and Notes:			
Personal or Family	$		$
Bank or Life Insurance			
Mortgages			
Other Substantial Indebtedness			
TOTAL LIABILITIES	$ -0-	JOINTLY OWNED	$ -0-
NET WORTH	$ 105,000	$ 38,800	$ 40,000

PLANNING ANALYSIS FOR JOHN EVERYMAN

LIFE INSURANCE

	Face Amount	Policy Numbers	Insuring Company	Issue Date	Policy Plan	Premium Outlay	Cash Value
A.	$10,000.00	4789632	Mutual Ins. Co.	4/24/39	Ordinary Life	$164.70/A	$3,550
B.	25,000.00	1001543	Stock Ins. Co.	12/1/42	Ordinary Life	325.50/A	5,900
C.	5,000.00	908211	National Service Life	7/3/44	Term	39.65/A	-0-

	Ownership	Beneficiary Designation	Proceeds Payable
Policy A	John Everyman	Wife, if living, otherwise children	One Sum
Policy B	John Everyman	Wife, if living, otherwise children	Fixed Life Annuity
Policy C	John Everyman	Wife, if living, otherwise children	Optional

INVESTMENTS

	Maturity Value	Description	Cost	Ownership	Present Market
GOVERNMENT BONDS	$5,000	4⅛ May, 1984	$4,900	Joint	$5,000
CORPORATE BONDS					
TAX EXEMPT BONDS					

	No. of Shares	Description	Cost	Ownership	Present Market
COMMON STOCKS	100	ABC Machinery Co.	$2,000	Husband	$6,200
PREFERRED STOCKS	10	XYZ Tool Co.	1,000	Wife	1,200
MUTUAL FUNDS	200	One Norton St. Fund	2,600	Joint	3,800

COMMENT

An estate that is between $60,000. and $120,000. in value and is owned by a husband whose wife has no estate of her own is one to which special attention should be given. The husband usually desires that the entire estate be available to his wife during the period she survives him, or available to himself if he survives his wife, and that what is left when both have died go to their children. Such an estate can be so arranged that no Federal estate tax will be payable on the death of either the husband or the wife, no matter in which order they die. At the same time, for all practical purposes the entire estate will be available to the survivor or survivors.

I. ESTIMATED ESTATE-TAX STATUS IF WIFE SURVIVES HUSBAND

HUSBAND'S GROSS ESTATE	$105,000	$105,000
Less: Administration Expenses and Debts	5,000	5,000
Adjusted Gross (Taxable) Estate	$100,000	$100,000
	Without proper Mar. Ded.	Max. Mar. Ded.
Taxable Estate	$100,000	$100,000
Less: Federal Estate Tax	-0-	-0-
New York State Estate Tax	1,000	1,000
Assets Distributable to Family: Marital Deduction Share		50,000
Residuary Share	$ 99,000	49,000

	His Entire Estate Outright	His Residuary Share in Trust
WIFE'S GROSS ESTATE		
Assets Already in Wife's Sole Name	$ 1,200	$ 1,200
Taxable Assets from Husband's Estate	99,000	49,000
TOTAL	$100,200	$ 50,200
Less: Administration Expenses and Debts	4,000	2,000
Adjusted Gross (Taxable) Estate	$ 96,200	$ 48,200
Less: Federal Estate Tax	4,116	-0-
New York State Estate Tax	1,936	600
Assets Distributable to the Family: From Wife's Estate		47,600
From Husband's Residuary Trust		50,000
TOTAL	$ 90,148	$ 97,600
Increase in Capital		$ 7,452

II. ESTIMATED ESTATE-TAX STATUS IF HUSBAND SURVIVES WIFE

WIFE'S GROSS ESTATE	$ 1,200	$
Less: Administration Expenses and Debts	(Nominal)	
Adjusted Gross (Taxable) Estate	$ 1,200	$
	Without proper Mar. Ded.	Max. Mar. Ded.
Taxable Estate	$ 1,200	$
Less: Federal Estate Tax	-0-	
New York State Estate Tax	-0-	
Total Assets Available to Family	1,200	

	Her Entire Estate Outright	Her Residuary Share in Trust
HUSBAND'S GROSS ESTATE		
Assets Already in Husband's Sole Name	$ 66,200	$
Jointly held property	38,800	
TOTAL	$105,000	$
Less: Administration Expenses and Debts	5,000	
Adjusted Gross (Taxable) Estate	$100,000	$
Less: Federal Estate Tax	4,800	
New York State Estate Tax	2,050	
Assets Distributable to Family: From Husband's Estate	$ 93,150	$

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